

REQUEST FOR REVIEW
before the
FEDERAL COMMUNICATIONS COMMISSION

CC Docket No. 02-6

Re: Applicant Name: LOWER YUKON SCHOOL DISTRICT
Billed Entity No: 145592
Funding Year: 2009-2010
Form 471 Application No.: 875747
Funding Request Number: 2390912

I. INTRODUCTION

Pursuant to 47 C.F.R. § 54.719(c), the Lower Yukon School District (the "District") appeals to the FCC from the Universal Service Administrative Company, Schools & Libraries Division ("SLD") decision, dated April 20, 2012. This appeal is based on SLD's decision that the District's Funding Year 2009-2010 Form 471 was "POSTMARKED OUTSIDE OF WINDOW," so that the District's application was placed on hold. The District seeks remand to SLD for full and immediate funding of the FRN.

Enclosed for the Commission's consideration are the following documents:

Exhibit 1: December 28, 2007, Request for Proposals Basic Maintenance of Internal Connections.

Exhibit 2: Lower Yukon School District Contract with Integrated Logic LLC for Internal Connections Maintenance 7/1/2008-6/30/2009; 7/1/2009-6/30/2010; 7/1/2010-6/30/2011.

Exhibit 3: Form 471 Application No. 632651 for the Contract with Integrated Logic, LLC; Funding Year 2008-2009. Submitted February 28, 2008.

Exhibit 4: Application Status Display for Form 471 Application No. 632651 showing Application Status as "FCDL Issued-01/05/2009."

Exhibit 5: Funding Commitment Decision Letter for Form 471 Application No: 752462, Funding Year 2010: 07/01/2010-06/30/2011, for Funding Request No.: 2033443.

Exhibit 6: Letter from David W. Shields, Director of Budget & Finance, Lower Yukon School District, dated April 14, 2010, to Jennifer Baumann, Special Compliance Review, USAC.


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Exhibit 7: April 29, 2011, communication from Jenny L. Martens, Director of Budget & Finance, Lower Yukon School District to Barbara Cannan, USAC dated April 29, 2011.

Exhibit 8: Email from Barbara Cannan to Jenny L. Martens dated May 26, 2011.

Exhibit 9: Email from Jenny L. Martens to Barbara Cannan dated July 10, 2011.

Exhibit 10: Letter from Thomas V. Wang, Esq., dated May 27, 2011, to Jennifer Baumann at USAC.

Exhibit 11: Email from Barbara Cannan to Jenny L. Martens dated August 11, 2011.

Exhibit 12: Letter dated August 25, 2011, from Jenny L. Martens to Barbara Cannan.

Exhibit 13: Letter dated September 9, 2011, from Jeffrey A. Mitchell, Esq. to Johnnay Schreiber, Esq. at USAC.

Exhibit 14: Letter from Jenny L. Martens to Barbara Cannan at USAC in response to request for information dated October 31, 2011.

Exhibit 15: Email from Johnnay Schreiber to Jeffrey Mitchell dated January 20, 2012.

Exhibit 16: Form 471 Application No. 875747 for Funding Year 2009: 7/1/2009-6/30/2010, postmarked March 19, 2012.

Exhibit 17: Letter dated April 20, 2012 from USAC to Jenny L. Martens, regarding Funding Year 2009 Form 471, stating that the "Form 471...was submitted online or post-marked AFTER the deadline for an application to be considered as filed within the window."

II. STATEMENT OF FACTS

The Lower Yukon School District is located in a very remote area of Alaska. Geographically, the District is half the size of the State of Louisiana and includes 11 very small villages with no connecting roads. Nine of those villages are on the Yukon River which is one of the largest rivers in North America and flows through two countries. Two villages are on the coast of the Bering Sea. Most travel is by small airplanes although occasionally, travel is by snow machine in the winter and boat in the summer. The children are almost exclusively of Yup'ik Eskimo descent.

On December 28, 2007, the District issued a Request for Proposals Basic Maintenance of Internal Connections. Exhibit 1. That RFP resulted in a contract with Integrated Logic

LLC for Funding Year 2008, Funding Year 2009, and Funding Year 2010. Exhibit 2. The 2007-2008 school year was the first year with the District for David W. Shields, Director of Budget & Finance. He had no prior experience with the E-rate Program, yet that became one of his responsibilities when he assumed that directorship. *See*, Exhibit 1, p. 1, last para.; and Exhibit 2, p. 4, denoting Mr. Shields as the authorized representative of the District.

The same month that the Contract with Integrated Logic LLC was executed, Mr. Shields filed form 471 Application No. 632651. Exhibit 3. As shown in Exhibit 4, the SLD's Application Status Display, the funding commitment decision letter for that Application was issued and approved on January 5, 2009.

Jenny L. Martens replaced David W. Shields as the Director of Budget & Finance for the District during the 2010-2011 school year. She filed Form 471 Application No. 752462 for Funding Year 2010, the third funding year of the Integrated Logic LLC contract. The USAC issued its Funding Commitment Decision Letter approving that application on January 5, 2012. Exhibit 5.

Jenny L. Martens subsequently determined that the District had not filed a completed Form 471 for funding year 2009, the second funding year of the Integrated Logic LLC contract. Ms. Martens sought to correct that failure by filing Form 471 Application No. 875747 on March 19, 2012, after receiving USAC's funding approval for Funding Year 2010. Exhibit 16. However, USAC issued its letter on April 20, 2012, determining that the Form 471 was postmarked after the deadline so that the application was being held and not approved for funding. Exhibit 17.

David W. Shields, the District's former Director of Budget & Finance has no documented explanation as to why he did not file a Form 471 for Funding Year 2009 prior to



his leaving the employ of the District. When first approached about this matter, he was stunned and upset, believing that he had filed it. The only reasonable explanation that he can provide is that due to his lack of E-rate experience, he must have believed that a separate Form 471 Application was not necessary for each and every funding year of the Integrated Logic LLC contract once the Form 471 for the first funding year, in this case Funding Year 2008, received a funding commitment decision letter.

As will be discussed in Section III of this Request for Review, the conduct of USAC regarding this entire matter cannot and should not be ignored by the Commission in its review. USAC obviously knew that the middle funding year of Integrated Logic's three year contract had not been submitted for funding, although the first and third years had been submitted, and approved, with the first year approval occurring on January 5, 2009. USAC did a lot of things during those 3 years, but it did not send a letter or email to the District advising that the deadline for filing Funding Year 2009 was approaching, or advising that the deadline for filing had passed, or even advising that a separate Funding Year 2009 Form 471 would still be required even though Funding Year 2008 had been approved.

The conduct of USAC is documented by many of the exhibits submitted in this Request for Review. Its starts with Mr. Shields' letter dated April 14, 2010 (Exhibit 6) responding to USAC's request for information dated March 30, 2010. The allegations against the District relating to the Integrated Logic LLC contract are extensive and extremely offensive and serious. They include the following:

The Superintendent told school employees to not perform network work so that Integrated Logic LLC could perform the work and charge high rates.

The Superintendent and/or Business Manager would not keep bids from other vendors and therefore no competing bids would be reviewed.

The Superintendent works as a consultant for Integrated Logic LLC.

The Superintendent and Business Manager regularly visit Integrated Logic LLC to be entertained and receive gifts.

The Superintendent told school employees to pay Integrated Logic LLC in payments of around \$20,000.00 each to avoid unnecessary Board attention since the district only has to report expenditures of over \$50,000.00 to the Board.

David W. Shields' response speaks for itself. However, it is worth repeating what he states in his cover letter: "Everyone has been shocked and offended at the allegations that have been made with no supporting documentation or evidence." Exhibit 6.

Please also review Exhibits 7, 8, 9, 10, 11, and most importantly Exhibit 12, the letter dated August 25, 2011 from Jenny L. Martens to Barbara Cannan at USAC. It was written to provide additional information and arguments to USAC, which had advised the District that its FRN's relating to this matter "will be denied." Two paragraphs in Exhibit 12 are appropriately quoted in this Request for Review. They are as follows:

The Lower Yukon School District does not dispute or question the right of USAC to review the District's funding requests to ensure compliance with program rules. However, the methodology used by USAC to achieve that review has displayed a level of arbitrariness, unprofessionalism, arrogance, and lack of accountability that is extremely troublesome and disturbing.

USAC has implied through its actions that decent, hardworking employees of the Lower Yukon School District are unethical, unprofessional, incompetent, and dishonest. The USAC may well hide behind its assertion that it is obligated to investigate concerns brought to its attention. However, the method it used, the failure to disclose the source of those concerns, the failure to provide any evidence of those concerns, and the failure to acknowledge, even in the May 11, 2011, email, that those concerns were not supported by evidence and were baseless, displays an appalling lack of decency.



As the Commission will recognize as it reviews the District's exhibits, Integrated Logic also communicated directly with USAC on this matter, as it clearly had an interest in the outcome, and was being accused as an accomplice to the alleged improper, dishonest and illegal actions of the District. As stated by Integrated Logics' attorney:

Finally, USAC's investigation was originally launched to address extremely serious allegations made regarding IL's conduct, not just with LYSD but with other schools as well. Unfortunately, the USAC's Notice is silent on its findings about those allegations. After a 16-month investigation, and the serious defamatory nature of the charges, Integrated Logic might reasonably expect that their disposition be documented. This would restore some much needed fairness to this process. Exhibit 13, at p. 8.

And what was USAC's ultimate response? Did it restore a sense of fairness? Did it demonstrate even a modicum of decency? Here it is:

The FCDLs serve as USAC's final decisions for these pending funding requests. It is not USAC's practice to issue written findings regarding an earlier intent to deny/comad determination. As a result of the follow-up questions and responses/documentation received from Integrated Logic LLC and Lower Yukon School District this past fall, USAC has decided to approve Lower Yukon School District's pending FY 2010 funding request. USAC will also not go forward with rescinding Lower Yukon School District's FY 2008 commitments for Integrated Logic's services. At this time, USAC considers its review regarding Lower Yukon School District and Integrated Logic to be completed. Exhibit 15 at p. 1.

III. DISCUSSION

As the FCC has routinely recognized, "many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural errors."¹ In such instances, the FCC has found that denials of the underlying applications are

¹ In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Archer Public Library, CC Docket No. 02-6, SLD-140961 et. al. para. 7 (Rel. October 30, 2008).



not warranted when “due to unintentional administrative or clerical errors, and the records...do not reveal more fundamental problems, such as misuse of funds or a failure to adhere to program requirements.”² As the FCC has recognized:

“...the primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to staff dedicated to pursuing federal grants, especially in small school districts. Even when a school official becomes adept at the application process, unforeseen events or emergencies may delay filings in the event there is no other person proficient enough to complete the forms.”³

The FCC has also discussed factors which do give rise to a violation of the competitive bidding process. Those factors include not seeking competitive bids, or failing to disclose the types of services sought by the district, thereby preventing service providers from properly bidding on a request.⁴ USAC has finally recognized and determined that those factors are not present in this matter.

The FCC’s determination to distinguish between the types of error involved is not surprising in light of the dictates of The Communications Act of 1934. This Act directs the FCC to “enhance ... access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms.”⁵ Denials of funding based on clerical or procedural errors “inflicts undue hardship on the applicants.”⁶

² *Id.*

³ In the Matter of Requests for Review of the Decision of the Universal Service Administrator by Alaska Gateway School District, CC Docket No. 02-6, SLD-412028, et al., para. 7 (Rel. September 14, 2006).

⁴ In the Matter of Requests for Review of the Decisions of the Universal Administrator, by Albert Lea Schools, et al., CC Docket No. 02-6, SLD-517274, et al., at para. 15 (Rel. April 14, 2009).

⁵ *Id.* at para. 8.

⁶ *Id.*

As stated above, on numerous occasions, the FCC has granted waivers of its rules and procedures to ensure both that the spirit of the law is served and that needy school districts receive access to telecommunications:

Moreover, we find that denying petitioner's requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. By contrast, waiving . . . our rules to the limited extent necessary . . . will further the goal of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore serve the public interest.⁷

These waivers are not just limited to USAC's deadline for the Form 486 filings, but also include waivers of the Form 471 filing window deadline.⁸ Regarding USAC's Form 486 responsibility to E-rate applicants, the Federal Communications Commission ordered "USAC to develop additional outreach and educational efforts to inform applicants of the application requirements in an attempt to reduce these types of filing errors."⁹ USAC was required to "develop a targeted outreach program designed to identify schools and libraries that have not [timely] filed their FCC Form 486..."¹⁰ Essentially, USAC was required to notify those applications in writing that they would have 15 calendar days from the date of the notification's receipt to file or amend the Form 486.¹¹

⁷ In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Academy of Excellence, et al., CC Docket No. 02-6, SLD-261209, et. al., at para. 9 (Rel. May 8, 2007).

⁸ In the Matter of Requests for Waiver and Review of Decisions of the Universal Service Administrator by Anderson Elementary School, et al., CC Docket No. 02-6, SLD-789495, et al. (Rel. May 22, 2012); In the Matter of Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science, et al., CC Docket No. 02-6, SLD-487009, et al. (Rel. July 8, 2010).

⁹ Alaska Gateway School District, SLD-412028 at para. 8.

¹⁰ *Id.*

¹¹ *Id.*

This outreach requirement should also be extended to applicants who have not filed their Form 471 within the relevant filing window deadline. This would be especially true in this case where USAC knew that the District had entered into a three funding year contract for internet maintenance services; knew that a timely First Funding Year Form 471 had been submitted and approved; and should have reasonably considered that applicants might not understand that a subsequent funding year Form 471 would still be required even though funding was based on an approved RFP, and an approved three funding year contract.

V. CONCLUSION

The FCC has recognized that “waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general.”¹² Failure to receive the funds at issue in this matter has had a significant, detrimental impact on the District and its mostly Alaska Native students. With no choice but to use other funds to replace denied E-rate funding, other educational needs of the District have been adversely affected.

The factual circumstances of this case warrant the FCC granting the appropriate rule waiver so that the matter can be remanded to the USAC with a direction that full funding for FRN: 1572016 Funding Year 2008 be approved.

DATED at Anchorage, Alaska, this 18th day of June, 2012.

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Attorneys for Lower Yukon School District

By: 

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¹²

Alaska Gateway School District, SLD-412028 at para. 5.

